LIBRARY
SUPREME COURT, U. S.

FILED
SEP 1 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, AND L. B. WILSON, INC., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF FOR RESPONDENT L. B. WILSON, INC. IN OPPOSITION

ROBERT A. MARMET
EDWIN R. SCHNEIDER
Attorneys for
L. B. WILSON, INC.
1820 Jefferson Place, N. W.
Washington 6, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Reports below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement of the case	2
Argument	4
Conclusion	9

CITATIONS

CASES:

Federal Communications Commission v. WOKO, 329 U.S. 223	5
Morgan v. United States, 304 U.S. 1	5, 8
National Labor Relations Board v. Pittsburgh Steamship Company, 340 U.S. 498	6
Simmons v. Federal Communications Commission, 145 F. 2d 578 (C.A.D.C.)	5

STATUTES:

Communications Act, as amended (47 Stat. 1064, 47 U.S.C. Section 15 *et seq.*)	
Section 312	6
Section 409(*c*)(2)	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, AND L. B. WILSON, INC.,

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

---

BRIEF FOR RESPONDENT L. B. WILSON, INC. IN OPPOSITION

REPORTS BELOW AND JURISDICTION

The statements concerning reports of this case in the courts below and jurisdiction, as set forth in the petition for a writ of certiorari, are considered adequate.

QUESTIONS PRESENTED

Although the four questions presented in the petition have been cast in an argumentative fashion, they generally suggest the issues in this case and will be considered in the argument in this brief. It is respectfully submitted, however, that the record of this case really raises only one central issue, which can be phrased as follows:

Whether it is proper for the Federal Communications Commission to deny a privilege to an applicant who seeks to obtain an award of that privilege by corrupt tampering with the adjudicatory process.

STATUTES INVOLVED

All necessary sections of the pertinent statute have been set forth in the petition.

STATEMENT OF THE CASE

The statement of facts of this case submitted by petitioner is substantially accurate, with the exception of certain omissions and inaccuracies which will be considered in the following paragraphs.

In his Initial Decision of December 1, 1958, Judge Horace Stern, the specially appointed Hearing Examiner, made extensive findings about the conduct of the petitioner which are not mentioned in the petitioner's statement. Judge Stern's full finding of fact regarding the petitioner is quoted as follows:

> "2. National Air Lines, Inc., on behalf of the applicant, Public Service Television, Inc., of which it was the owner, through its emissary, Thurman A. Whiteside, attempted improperly, by private interviews and otherwise not by the recognized and public processes of adjudication, to influence Com-

> missioner Mack with respect to the proceedings which resulted in the award of the construction permit for Channel 10, Miami, in order to induce him to favor and to vote for Public Service Television, Inc., in the final decision." (S.J.A. 29 FCC 238)

To reach this finding of fact, Judge Stern considered the undisputed evidence that the principals of National Air Lines had approached Mr. Whiteside and offered him a fee, after the record of the case was closed, without even knowing whether he was a member of the Bar of the Federal Communications Commission. Whiteside was selected because it was thought that he "might have an entree to Mack that other people would not have"—because he "stood top notch with Mr. Mack." Judge Stern found that the attempt to employ Whiteside was inspired neither by his professional competence nor the need for professional services, but only by the expectation that his personal influence with Mack would be expected to win a favorable decision for the petitioner. Whiteside was directed to "use his own devices to secure this channel for National Air Lines." (S.J.A. 29 FCC 231, 232)

Judge Stern characterized National Air Lines' attempts at influence as "reprehensible activities and improprieties". He concluded that a person guilty of such misconduct "cannot be allowed to obtain any advantage or profit by his wrongdoing, nor suffered to enjoy the fruits of his transgression". (S.J.A. 29 FCC 237, 238)

Judge Stern refused to adopt proposed findings of fact which urged that L. B. Wilson, Inc., had improperly attempted to influence a Commissioner through Senator Smathers. In fact, he found that this senator

had aided another applicant (WKAT, Inc.) in improper attempts to influence a Commissioner (S.J.A. 29 FCC 225, 230, 231, 238).

The findings of the specially appointed hearing examiner were approved by the Commission. It found that all of the applicants except L. B. Wilson, Inc. had demonstrated that they were unfit to be licensees. Consequently, the construction permit was awarded to L. B. Wilson, Inc. (S.J.A. 29 FCC 218)

The Court of Appeals for the District of Columbia Circuit, after a complete review of the record, approved the Commission's action. It found that the petitioner's efforts at improper influence "eat at the very heart of our system of government—". Concluding that this case involved "corrupt tampering with the adjudicatory process itself," the Court approved the Commission's conclusion that "no public interest in service or capacity for service is paramount to the public interest in the integrity of the adjudicatory processes of government." (App. to Petition, p. 6a)

ARGUMENT

1. Petitioner has urged upon this Court the proposition that Section 409(c)(2) of the Communications Act is the sole standard of ethical conduct to be applied in determining the propriety of an applicant's conduct in an administrative proceeding. It is then claimed that the Commission expressly refused to find a violation of this section. The two parts of this argument are based upon petitioner's errors of law and fact. The Commission never made any express finding concerning violation of Section 409(c)(2). It merely denied an exception to a failure to find such violation on the

ground that it was: "Moot in view of the Commission's Decision herein." (S.J.A. 29 FCC 220) The Commission never reached the questions raised by this section because it was not necessary to do so. Upon a review of the petitioner's conduct, both Judge Stern and the Commission found it guilty of "reprehensible activities and improprieties." This misconduct reflected so adversely upon the petitioner's character that the Commission could only conclude that it lacked the qualifications to be a licensee. *Federal Communications Commission* v. *WOKO*, 329 U.S. 223. Since the Supreme Court's decision in *Morgan* v. *United States*, 304 U.S. 1, 22, there has been no question that the "cherished judical tradition embodying the basic concepts of fair play" governs the conduct of litigants appearing before administrative agencies. The petitioner has not even challenged the accuracy of Judge Prettyman's statement that, "This case concerns corrupt tampering with the adjudicatory process itself." Contrary to petitioner's contention, there is no confusion among litigants before administrative agencies regarding the propriety of such corrupt practices.

2. The petitioner has resurrected a consistently discredited contention that L. B. Wilson, Inc., attempted to exert improper influence upon Commissioner Mack through Senator Smathers.[1] This diversionary attack upon the qualifications of L. B. Wilson, Inc., has been launched before the specially appointed hearing examiner, the Commission and the Court of Appeals.

---

[1] It should be noted that petitioner has no standing to raise this question. Any injury to this petitioner results from its own misconduct and inevitable disqualification, not from the award to L. B. Wilson, Inc., *Simmons* v. *Federal Communications Commission*, 145 F. 2d 578 (C. A. D. C.).

The contention has been rejected at every stage of the proceedings. In fact, the Court of Appeals did not even seem to consider the point worthy of discussion, merely noting that "L. B. Wilson, Inc., was not involved in irregular activities" (App. to Petition, p. 6a). Thus, the petitioner is requesting this Court to accept a factual determination which has already been rejected at three separate stages of this case.[2] In cases of this nature this Court has properly confined its review to important issues of law. *National Labor Relations Board* v. *Pittsburgh Steamship Company*, 340 U.S. 498, 502-3.

3. The petitioner seeks, but is not entitled to, the rights provided in Section 312 of the Communications Act. Petitioner has never received a final grant of a construction permit. Its claim that it has built and operated a television station pursuant to a construction permit which never became final does not earn for it the rights provided by Section 312 of the Act. The station was constructed at the petitioner's peril while the Commission's discredited decision was on appeal.

---

[2] Senator Smathers was one of three co-executors of the Estate of L. B. Wilson, the former majority stockholder in L. B. Wilson, Inc., who died in 1954. None of the three executors had any voting rights in the stock of L. B. Wilson, Inc., held by the Estate of L. B. Wilson, all voting rights in Mr. Wilson's stock having passed to three senior employees of the Wilson company (J.A. 38-39). Thus, there was no relation between Senator Smathers and L. B. Wilson, Inc. Senator Smathers wanted L. B. Wilson, Inc. to dismiss the application so that the Estate could be closed. The record is clear that Senator Smathers thought the L. B. Wilson, Inc. application should be dismissed or denied. The petitioner's position becomes ludicrous when it is noted that petitioner's President stated under oath before Judge Stern that he had never heard Senator Smathers' name mentioned in connection with this case except when he was trying to help WKAT, Inc.

Petitioner's permit was not revoked because it was never final. It is to be set aside as a result of a hearing on remand from the Court of Appeals. Thus, there is no question involving Section 312 of the Communications Act in this proceeding. The minimal significance of this issue is demonstrated by the fact that the petitioner did not even mention Section 312 of the Act in its brief-in-chief before the Court of Appeals. It first raised the Section 312 argument in its reply brief.

4. As its fourth reason for granting a writ in this case, the petitioner advances two basic, though unrelated, arguments.

First, it claims that the facts developed in the remand proceeding could not support absolute and automatic disqualification. Petitioner urges that all other factors ordinarily considered in a comparative proceeding should be balanced against its gross misconduct, and that a determination should then be made regarding public interest. The weakness of this argument is apparent when the nature of the misconduct is considered. Judge Stern found the petitioner guilty of "reprehensible activities and improprieties". The Commission found the pteitioner unfit to be a licensee because of its "willingness thus to pervert the process of administrative adjudication . . ." (S.J.A. 29 FCC 218) Reviewing all of the facts and the record of this proceeding, the Court of Appeals concluded that the petitioner's activities ate at "— the very heart of our system of government, due process, fair play, open proceedings, unbiased, uninfluenced decision." The Court of Appeals then articulated the reason why the petitioner's argument is unacceptable:

> "We do not have here an ordinery case of 'unclean hands', in which counterbalancing considerations

> of public interest in the service involved might justify awards despite misbehavior. This case concerns corrupt tampering with the adjudicatory process itself. No public interest in service or capacity for service is paramount to the public interest in the integrity of the adjudicatory processes of government, the Commission concluded." (The Court then approved the Commission's conclusion)

Petitioner has not seriously questioned the conclusions of three tribunals regarding its reprehensible conduct. Instead, it comes before this Court as a "corrupter of the government" and asks for a further lengthy hearing before the Commission to prove that such reprehensible conduct is merely one of several minor factors to be considered in a comparative proceeding. The outcome of such a proceeding is quite predictable. The effort to obtain such a hearing is clearly an attempt to keep this profitable operation on the air for a few more years, so that the petitioner may continue to reap the fruits of its misconduct.

The second part of the petitioner's fourth point contains the somewhat cynical argument that its misconduct was proper because there was an established climate of improper activity before the Commission at the time. Petitioner claims that it was merely playing the game in accordance with the corrupt customs in vogue at the time. Petitioner's description of 'the prevailing view at that time" is based on the thinnest speculation. Furthermore, the argument fades to insignificance in the light of this Court's established determination that adjudicatory functions of an administrative agency must be conducted in accordance with "cherished judicial tradition embodying the basic concepts of fair play." *Morgan* v. *United States*, 304 U.S.

1, 22. The standards of ethical conduct have been judicially established. In the face of such precedent, litigants can not be allowed to plead their cases in accordance with their own unique concept of fair play.

In concluding its argument at pages 14 and 15 of the brief, the petitioner brings out a point which is unrelated to any of the issues stated in the petition. It appears to be an emotional appeal containing broad allegations that the petitioner has constructed a television station at substantial expense, has employed a large staff and has been broadcasting since 1957. The appeal overlooks the fact that the station was constructed at the petitioner's peril while the validity of the award was subject to appellate review. It fails to mention that respondent L. B. Wilson, Inc. has constructed similar facilities at substantial expense pursuant to an award from the Commission. It fails to mention the huge profits which the petitioner has reaped as the fruits of its misconduct (petitioner's president has estimated them at $750,000.00 per year). It fails to mention the fact that petitioner's president has publicly stated that the company's assets could be liquidated "without incurring any material loss." (Registration Statement filed with Securities and Exchange Commission, September 21, 1960). This attempt at an emotional appeal is not only irrelevant, it is also misleading in its attempt to place the petitioner in an attractive equitable position. It should be disregarded.

CONCLUSION

The petitioner has raised no substantial question warranting review by this Court. Resolution of the basic issue in this case is clear. The Commission may properly deny an award to an applicant who attempts

to obtain it through corrupt influence. The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT A. MARMET
EDWIN R. SCHNEIDER

Attorneys for respondent
L. B. WILSON, INC.

1820 Jefferson Place
Washington, D. C.

September 1, 1961

FILED
SEP 21 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, and L. B. WILSON, INC., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

MOTION FOR DAMAGES FOR DELAY

ROBERT A. MARMET
EDWIN R. SCHNEIDER, JR.
Attorneys for L. B. Wilson, Inc.

MARMET & SCHNEIDER
1820 Jefferson Place
Washington 6, D. C.

September 21, 1961

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, and L. B. WILSON, INC., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

---

MOTION FOR DAMAGES FOR DELAY

L. B. Wilson, Inc., (Wilson) respondent herein, by its attorneys, respectfully requests that this Court direct Public Service Television, Inc. (PST) petitioner herein, to pay to respondent Wilson the damages which it has suffered because of the delay occasioned by the filing of the petition for a writ of certiorari.

1. Rule 56.4 of this Court provides as follows:

> "Where a petition for writ of certiorari has been filed, and there appears to be no ground for grant-

ing such a writ, the Court may, in appropriate cases, adjudge to the respondent reasonable damages for his delay."

2. On July 6, 1961 a unanimous panel of the United States Court of Appeals for the District of Columbia Circuit entered a judgment in this proceeding directing the Federal Communications Commission (Commission) to issue an order to the petitioner to terminate its operation on Channel 10 in Miami, Florida, and directing respondent Wilson to commence operation on this channel. The petitioner's motion to the Court of Appeals for a stay of this judgment was denied, *per curiam,* on September 1, 1961. On September 11, 1961 the Chief Justice of the United States ordered that the judgment of the Court of Appeals be stayed to and including October 16, 1961.

3. On July 14, 1960 the Commission entered an order setting aside its order of February 8, 1957, which had granted the PST application to operate on Channel 10 in Miami. This July 14 order, in addition to setting aside the PST grant, granted Wilson's application for Channel 10. Under the terms of the construction permit granted to Wilson, construction was required to commence with sixty days. Pursuant to the authority contained in this permit, Wilson constructed an entire new station in record time on Channel 10, so that the public would not lose service when PST went off the air. A real threat of loss to the public existed, as PST had been ordered to close down its operation by September 15, 1960.

4. The Commission denied petitioner's request for a stay. Petitioner then filed a similar request with the Court of Appeals. The Commission, in order to

preserve the jurisdiction of the Court of Appeals to act upon the application for stay, issued an order continuing the PST operation until fifteen days after the Court of Appeals ruled upon the application for stay.

5. Wilson constructed this station in good faith on the basis of the Commission's order of July 14, 1966, granting its application for a construction permit. As a result, Wilson has committed over one million dollars to this operation. Large amounts have been spent to maintain these facilities in a stand-by status ready to provide a full program service on fifteen days notice. As indicated in the attached affidavit, the monthly stand-by costs required to maintain this facility in a state of readiness amount to at least $15,000.00.

6. From the above it is quite apparent that L. B. Wilson, Inc., is being damaged severely by the delays occasioned by the filing of the petition for a writ of certiorari. The only question remaining under Rule 56.4 is whether there appears to be any ground for granting the writ.

7. The petition for a writ of certiorari and the briefs of the respondent are before this Court. They will be studied by this Court in passing upon the petition for a writ. It would be unduly repetitious to repeat the arguments contained in these pleadings. In summary, however, the petition raises no matters meriting review in accordance with the considerations and criteria set forth in Rule 19 of this Court. From a review of the petition and the responsive briefs, it is apparent that the petitioner has not even seriously questioned the conclusions which have been reached at three stages of this proceeding regarding its reprehensible conduct and corrupt tampering with the adjudicatory process.

The obvious purpose of filing the petition with this Court was to obtain a little more delay so that the petitioner could maintain its profitable operation until the last possible day. In the meanwhile, respondent L. B. Wilson, Inc. has been severely damaged at the rate of over $15,000.00 per month.

8. In the Court of Appeals decision in this case (App. to Petition, p. 5a, 6a) Judge Prettyman very aptly quoted with approval the doctrine set forth in [illegible] F. 2d 514, 541 (3rd cir. 1948) *cert denied* 335 U.S. 912 (1949). From the moment that a litigant ". . . ceases to depend upon the justice of his case and seeks discriminatory and favored treatment, he becomes a corrupter of the Government itself and is fortunate if he loses no more than the rights he seeks to obtain". To date, the petitioner has profited handsomely from its misconduct (petitioner's President has estimated profits at $750,000.00 per year). Almost a year ago, (in a Registration Statement filed with the Securities and Exchange Commission on September 21, 1960) the petitioner's President publicly stated that the company's assets could be liquidated "without incurring any material loss," regardless of the outcome of this litigation. It thus appears that PST is in an excellent financial position to compensate Wilson for its damages for the delay occasioned by the filing of the petition in this case.

9. The petitioner has already reaped large profits as the fruit of its misconduct. The petition for a writ of certiorari alleges no substantial ground for granting such a writ. Respondent Wilson has suffered and continues to suffer damage by delays in the disposition of this case. The conclusion is inescapable that the profits

gathered by the petitioner as a result of its corrupt practices constitute an appropriate fund to compensate respondent Wilson for its damages.

Wherefore, it is respectfully requested that this Court enter an order appointing a special master to ascertain the damages suffered by respondent Wilson for the delay occasioned by the filing of the petition for a writ of certiorari, and directing the petitioner to compensate Wilson for these damages.

Respectfully submitted,

ROBERT A. MARMET
EDWIN R. SCHNEIDER, JR.
Attorneys for L. B. Wilson, Inc.

MARMET & SCHNEIDER
1820 Jefferson Place
Washington 6, D. C.

September 21, 1961

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF DADE:

I, CHARLES H. TOPMILLER, being duly sworn, deposes and sayeth:

THAT I am President, Director, and a stockholder of L. B. Wilson, Inc., owners of WLBW-TV, Miami, Florida. As President of the Company, I can state that WLBW-TV was constructed, in the record time of approximately forty (40) days, and was ready to go on the air on November 4, 1960. The Station has been maintained in a position since that date to go on the air within fifteen (15) days.

Total expenditures to date have been over one million dollars. L. B. Wilson, Inc. has in excess of $746,000.00 invested in physical assets. The total standby expenses in keeping the Station in readiness to go on the air have amounted to in excess of $255,000.00. The standby expenses for the month of August, 1961, were in excess of $15,000.00. Expenses for subsequent months are expected to be at least as much.

In addition, L. B. Wilson, Inc. has committed itself to a two (2) year lease on its studio building in the amount of $45,600.00, with an additional payment of $2,100.00 for a purchase option on the studio building.

CHARLES H. TOPMILLER
Charles H. Topmiller
President

Sworn to and subscribed before me this 18th day of September, 1961.

LOIS S. COLE
(SEAL) *Notary Public*

FILED
SEP 28 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, AND L. B. WILSON, INC., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF IN OPPOSITION TO MOTION FOR DAMAGES FOR DELAY

NORMAN E. JORGENSEN
Attorney for Public Service Television, Inc.

2011 Eye Street, N.W.
Washington 6, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, AND L. B. WILSON, INC., *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

---

BRIEF IN OPPOSITION TO MOTION FOR DAMAGES FOR DELAY

Public Service Television, Inc., Petitioner herein, files this Opposition to L. B. Wilson's "Motion For Damages For Delay" and shows the following:

1. Contrary to Respondent's contention, the petition for certiorari filed by Petitioner is not responsible for

any delay in this case. The Rules of the Court below do not provide for automatic stays upon the filing of a petition for writ of certiorari. This is a matter committed to the discretion of the Court. Indeed in this case the Court below exercised this discretion and denied a stay. Similarly the Rules of this Court do not provide for automatic stays upon the filing of a petition for certiorari. The grant of a stay is likewise committed to the Court's discretion. Here the Court, upon consideration of Petitioner's application for stay and the opposition thereto, deemed appropriate a stay to and including October 16, 1961. The petition for certiorari and briefs in opposition thereto are now pending before the Court, and were pending when the application for stay was filed.

2. At no time has Petitioner sought to delay these proceedings. The Court of Appeals decision issued on July 6, 1961. Petitioner did not seek rehearing which would have operated as an automatic stay of the Court's decision in accordance with Rule 27(d) of the Court below. Petitioner did file on July 13, 1961 an application with the Court below to stay its judgment until August 5, 1961 to enable it to file a petition for writ of certiorari. In fact this petition for certiorari was filed on August 4, 1961. The Court below denied Petitioner's application for a stay on September 1, 1961. A copy of the Court's denial was received by counsel for Petitioner on September 5, 1961 and on that same day Petitioner applied to this Court for a stay. It is obvious then that at no stage of this litigation has Petitioner sought to delay the proceeding.

3. The petition for certiorari raises novel questions of substantial importance in the administration of the Communications Act and administrative agencies gen-

erally. Moreover as set forth on pages 14-15 of the petition for certiorari, Petitioner has a substantial and valuable interest in an operating broadcasting facility in Miami, Florida, which is seriously jeopardized by the decision of the Court below. Indeed, where as here the Court below refused a stay, "this Court requires an extraordinary showing before it will grant a stay of the decree below pending the application for a certiorari, and even after it has granted a certiorari, it requires a clear case and a decided balance of convenience before it will grant such a stay." *Magnum Co.* v. *Coty*, 262 U.S. 159, 164. The suggestion in Respondent's motion that "there appears to be no ground for granting such a writ" is thus obviously baseless. And it begs the very question at issue before the Court at this moment.

4. Respondent's plea that it has expended money in constructing and maintaining television facilities can carry no weight. These expenditures were assumed with the knowledge that substantial litigation concerning the ultimate award was in progress.

Respectfully submitted,

NORMAN E. JORGENSEN
Attorney for Public Service Television, Inc.

2011 Eye Street, N.W.
Washington 6, D. C.

September 26, 1961.